

PUBLIC UTILITIES STAFF

BOB L. MARSH
DEPUTY ADMINISTRATOR

MICHAEL MCCOOL, DIRECTOR
WATER & SEWER DIVISION

CHRISTOPHER GARBACZ, DIRECTOR
ECONOMICS & PLANNING DIVISION



ROBERT G. WAITES
EXECUTIVE DIRECTOR

GEORGE M. FLEMING
GENERAL COUNSEL

VIRDEN C. JONES, DIRECTOR
ELEC., GAS, & COMMUNICATIONS DIVISION

RANDY TEW, DIRECTOR
COMMUNICATIONS SECTION

January 21, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-45; Mississippi Public Service Commission Petition for Waiver of
Section 54.314(d) of the Commission's Rules

Dear Ms. Dortch:

Enclosed please find the Mississippi Public Service Commission Petition for Waiver in Docket No. 96-45, which was necessitated due to an electrical problem which prevented the Mississippi Public Service Commission's designation of Southern Telecommunications Company, LLC as an ETC, as well as the certification of Southern Telecommunications Company, LLC, Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp.'s 2005 universal service plan by the January 1, 2005, deadline.

Thank you for your prompt attention to this petition.

Sincerely,

A handwritten signature in cursive script, appearing to read "George M. Fleming".

George M. Fleming
General Counsel

Enclosure

Cc: Andy Gipson
Bruce McKinley
Gina Spade

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Federal-State Joint Board on Universal Service
Mississippi Public Service Commission
Petition for Waiver of Section 54.314(d)(1) of the Commission's Rules

CC Docket No. 96-45

WAIVER - EXPEDITED ACTION REQUESTED

**MISSISSIPPI PUBLIC SERVICE COMMISSION PETITION FOR WAIVER OF
SECTION 54.314(d) OF THE COMMISSION'S RULES**

The Mississippi Public Service Commission ("MPSC"), pursuant to Sections 1.3 and 1.925 of the Federal Communication Commission's ("FCC's" or "Commission's") rules,¹ hereby petitions the Commission for an expedited waiver of the January 1, 2005, filing deadline set forth in Section 54.314(d) of the Commission's rules. Approval of this waiver request will allow Southern Telecommunications Company, LLC ("Southern"), Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp. ("Centennial") to receive universal service support in Mississippi beginning April 1, 2005, which would have otherwise been the eligible date, but for a delay of the effective date of the MPSC's orders designating Southern as an Eligible Telecommunications Carrier's ("ETC") and certifying Southern's and Centennial's 2005 universal service plan. Due to circumstances beyond the MPSC's or the

¹ See 47 C.F.R. § 1.3; § 1.925. Pursuant to § 1.1105 of the rules, no filing fee applies to this request.

companies control arising from a severe electrical problem which caused the closing of the MPSC's office building from December 27, 2004, through January 3, 2005, the MPSC was unable to complete and submit its orders designating Southern as an ETC and certifying Southern's and Centennial's 2005 plan by the January 1, 2005, filing deadline.

Southern and Centennial will require access to the universal service funding to which it is entitled in order to promptly begin servicing currently underserved areas of Mississippi. In light of Southern's and Centennial's commitment to provide universal service to areas of Mississippi, each day that they are delayed in receiving its authorized funding results in a day-for-day delay in the provision of competitive service in these areas. For this reason, the MPSC respectfully requests that this request be granted on an expedited basis, as soon as possible.

BACKGROUND

The MPSC was finalizing its preparations to enter the orders designating Southern as an ETC and approving Southern's and Centennial's USF Plans during the week of December 19, 2004. The orders were to be circulated to the Mississippi Public Service Commissioners and transmitted to the FCC and USAC during the week of December 26, 2004. However, an unexpected and severe electrical problem within the Mississippi Woolfolk State Office Building caused the building to be closed and, consequently prohibited the conduct of any business of the MPSC during the entire week of December 26, 2004. A press release concerning the electrical outage is attached hereto as Exhibit "A." Accordingly, the MPSC was delayed several days in designating Southern and certifying Southern's and Centennial's 2005 USF Plans to the FCC and USAC. These factors were beyond the control of the MPSC or the companies, and clearly constitute good cause justifying a waiver of the FCC's deadline.

REQUEST FOR WAIVER

Section 1.3 of the Commission's rules provides the Commission with discretion to waive application of any of its rules upon a showing of good cause. In addition, Section 1.925(b)(3) provides for waiver where it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²

Federal courts also have recognized that "a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest."³ Accordingly, the Commission "may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest."⁴

The Commission established the quarterly Section 54.314 certification filing schedule to facilitate USAC's ability to report universal service support projections to the FCC. The schedule in Section 54.314 was not intended to create a process that disadvantages carriers receiving ETC designation subsequent to one of the quarterly certification deadlines.

The Commission has previously concluded that strict application of the Section 54.314 certification filing schedule is inconsistent with the public interest and undermines the

² See 47 C.F.R. §1.925(b)(3).

³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WATT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁴ *Northeast Cellular Telephone Co.*, 897 F.2d at 1166 (citing *WATT Radio* 418 F.2d at 1159).

Commission's goals of competitive neutrality when a carrier is denied universal service support it is otherwise entitled to receive. In granting similar waiver requests to competitive ETCs, the Commission has acknowledged that strict application of the certification filing schedule set forth in Section 54.314(d) may have the effect of penalizing newly designated ETCs. For that reason the Commission has determined that it would be "onerous" to require an ETC to forego universal service support solely because it was designated as an ETC after a certification deadline.⁵

Here, it would be onerous to deny Southern or Centennial receipt of universal service support beginning April 1, 2005, merely because Southern's ETC designation and both Southern's and Centennial's certification for the 2005 USF plan occurred after the Section 54.314 certification filing deadline⁶ due to an unforeseeable electrical problem. Under these circumstances, the Section 54.314 certification filing schedule would have the unintended consequence with respect to Southern and Centennial in Mississippi of delaying universal service support well beyond the effective date of the certifications. This is inconsistent with, and frustrates, the underlying purpose of the Commission's rules, and is inequitable and unduly burdensome.

For all these the reasons, granting a waiver of the filing deadline set forth in Section 54.314(d) of the rules - which will allow Southern and Centennial to receive universal service

⁵ RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations, Order, 17 FCC Rcd 24387, para. 6 ("RFB Waiver Order"); Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, DA 03-1169 (rel. April 17, 2003) ("Guamcell Waiver Order"); Western Wireless Corporation Petition for Waiver of Sections 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, DA 03-2364 (rel. July 18, 2003) ("Western Wireless Order").

⁶ See Western Wireless Order, para. 7.

support beginning on April 1, 2005, is appropriate and consistent with Commission precedent, consistent with the Commission's statutory goal of preserving and advancing universal service, and in the public interest.

REQUEST FOR EXPEDITED TREATMENT

The MPSC respectfully requests expedited action on this waiver request. Southern's and Centennial's Mississippi consumers that they serve - and seek to serve - should not be deprived of substantial universal service support as a result of the unintended timing problem created by the quarterly filing deadlines of Section 54.314(d) and the unforeseen electrical problem affecting the MPSC. Denying Southern and Centennial support for 2005 under these circumstances is contrary to the statutory goal of promoting the availability of universal service to consumers in high-cost areas.

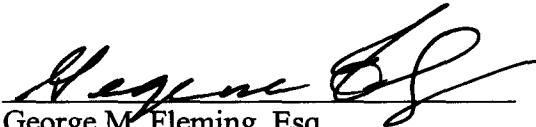
In these circumstances, not only is a waiver of the Commission's rules fully justified, it is also critically important that the waiver be granted on an expedited basis so that Southern and Centennial may immediately begin the planning and implementation of its universal service offering.

CONCLUSION

For the reasons stated herein, the MPSC respectfully requests, pursuant to Sections 1.3 and 1.925 of the FCC's rules, a waiver of Section 54.314(d) of the Commission's rules. In light of the unique factual setting of this request - specifically, an unforeseen electrical problem and Southern's and Centennial's commitment to provide service to certain underserved areas of Mississippi. The MPSC also seeks expedited consideration of its waiver request.

Respectfully submitted this the 21st day of January, 2005.

MISSISSIPPI PUBLIC SERVICE COMMISSION

By: 
George M. Fleming, Esq.
Counsel For

George M. Fleming, General Counsel
Mississippi Public Utilities Staff
Post Office Box 1174
Jackson, Mississippi 39215-1174
Telephone: (601) 961-5875
Facsimile: (601) 961-5804

EXHIBIT "A"

**MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION
PRESS RELEASE DATED DECEMBER 28, 2004**

STATE OF MISSISSIPPI
HALEY BARBOUR, GOVERNOR
DEPARTMENT OF FINANCE & ADMINISTRATION
J.K. STRINGER, JR.
EXECUTIVE DIRECTOR
For Immediate Release Contact: Kym Wiggins
December 28, 2004 (601) 594-8735

Jackson, MS – Today, the Mississippi Department of Finance & Administration announced that the Woolfolk State Office Building is closed because of a power outage and will reopen on Monday, January 3, 2005.

The power outage is the result of a mechanical failure of the “electrical busway,” the mechanism that carries electrical current to the building. DFA staff is working to repair the mechanism and anticipate having power restored to the building by Monday.

State employees working in the Woolfolk Building should not report to work unless otherwise instructed by their supervisors. Additionally, citizens who need to conduct business with offices in the building should call the direct lines of the offices for voice mail instructions. DFA has set up a hotline to answer questions regarding financial information such as payroll or vendor payments. The number for this hotline is (601) 359-1343.

All other state offices in the Capitol Complex will be open through Thursday, December 30, 2004. All state offices will be closed on Friday, December 31, 2004 for the observance of New Year’s Holiday. However, Monday, January 3, 2005 offices will be closed at the discretion of the respective agency heads.

The Woolfolk Building is the main administrative office building for state government, housing approximately 1,000 state employees. “DFA and other agencies located within this building have made arrangements to continue to carry out the business of the state. I expect that there will be minimal inconvenience and no disruption of the services provided by the agencies within in this building.” says J. K. Stringer, Jr., Executive Director of the DFA.

The Woolfolk Building’s tenants include: The Governor’s Office, Mississippi Development Authority, Department of Finance & Administration, Department of Insurance, Banking & Consumer Finance, Public Service Commission, Legislative Budget Office, PEER, Department of Audit, and the Office of the Treasurer.

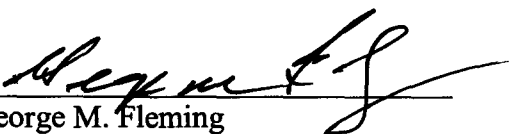
CERTIFICATE OF SERVICE

I, George M. Fleming, Counsel for the Mississippi Public Service Commission, hereby certify that a copy of the foregoing Mississippi Public Service Commission Petition for Waiver of Section 54.314(d) of the Commission's Rules has been delivered via e-mail(*) or United States Mail, postage prepaid, to the following:

J. Andrew Gipson, Esq.
Watkins, Ludlam, Winter & Stennis
P.O. Box 427
Jackson, MS 39205-0427

William McKinley
Copeland, Cook, Taylor & Bush
200 Concourse, Ste. 200
1062 Highland Colony Parkway
Ridgeland, MS 39157

Gina Spade(*)
Assistant Division Chief
Telecom. Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-C330
Washington, D.C. 20554


George M. Fleming